

Guidelines for Determining Resident Status — 1995

A Introduction

It is important for California income tax purposes that you make an accurate determination of your residency status. Residency is primarily a question of fact to be determined by examining all the circumstances of your particular situation. This publication provides information that will help you determine:

- whether you are a resident of California;
- whether your income is taxable by California; and
- what form to file if you have a California filing requirement.

Note: The Franchise Tax Board issues written advice on whether a particular activity or transaction is subject to tax under the income tax laws of California. Because residency is a question of fact, not law, the Franchise Tax Board will not issue a written opinion on whether you are a California resident for a particular period of time. The information included in this publication is provided to help you with this determination.

In addition to this publication, military personnel should use FTB Pub. 1032, Tax Information for Military Personnel.

B Who are Residents and Nonresidents

A “**resident**” is any individual who is:

- in California for other than a temporary or transitory purpose; or
- domiciled in California, but outside California for a temporary or transitory purpose.

A resident who is outside California for a temporary or transitory purpose remains a resident.

A “**nonresident**” is any individual who is not a resident.

A “**part-year resident**” is any individual who is a California resident for part of the year and a nonresident for part of the year.

Note: For taxable years beginning on or after January 1, 1994, a “safe harbor” is available for certain individuals leaving California under employment-related contracts. The safe harbor provides that an individual domiciled in California who is outside California under an employment-related contract for at least 546 consecutive days will be considered a nonresident unless:

- the individual has intangible income exceeding \$200,000 in any taxable year during which the employment-related contract is in effect; or

- the principal purpose of the absence from California is to avoid personal income tax.

The spouse of the individual covered by this safe harbor rule will also be considered a nonresident while accompanying the individual outside California for at least 546 consecutive days.

Return visits to California that in the aggregate do not exceed 45 days during any taxable year covered by the employment contract are considered temporary.

Individuals not covered by this safe harbor must determine their residency status based on their facts and circumstances as described in Section D and Section E.

C Significance of Residency

Residency is significant because:

- residents of California are taxed on ALL income, including income from sources outside California;
- nonresidents are taxed only on income from California sources; and
- part-year residents are taxed on all income while a resident, and only on income from California sources while a nonresident.

D Guidelines for Determining Residency

The underlying theory of residency is that you are a resident of the place where you have the closest connections.

The following list shows some of the factors you can use to help determine your residency status. Since your residence is usually the place where you have the closest ties, you should compare your ties to California with your ties elsewhere. In using these factors, remember it is the strength of your ties, not just the number of ties, that determines your residency.

Factors to consider:

- amount of time you spend in California versus amount of time you spend outside California;
- location of your spouse and children;
- location of your principal residence;
- where you were issued your driver's license;
- where your vehicles are registered;
- where you maintain your professional licenses;
- where you are registered to vote;
- location of the banks where you maintain accounts;
- location of your doctors, dentists, accountants and attorneys;

- location of the church or temple, professional associations, or social and country clubs of which you are a member;
- location of your real property and investments;
- permanence of your work assignments in California; and
- location of your social ties.

Caution: This is only a partial list of the factors to consider. You must consider **all** the facts of your particular situation to determine your residency status.

E Temporary or Transitory Purposes

Generally, your state of residence is where you have your closest connections. If you leave your state of residence, it is important to determine if your presence in a different location is for a temporary or transitory purpose. You should consider the purpose and length of your stay when determining your residency.

Coming into California

When you are in California for temporary or transitory purposes, you are a nonresident of California. For instance, if you come to California for a vacation, or to complete a transaction or are simply passing through, your purpose is temporary or transitory. As a nonresident, you are taxed only on your income from California sources.

When you are in California for other than a temporary or transitory purpose, you are a California resident. For instance, if your employer assigns you to an office in California for a long or indefinite period, if you retire and come to California with no specific plans to leave, or if you are ill and are in California for an indefinite recuperation period, your stay is other than temporary or transitory. As a resident, you are taxed on income from all sources.

Note: You will be presumed to be a California resident for any tax year in which you spend more than nine months in this state.

Although you may have connections with another state, if your stay in California is for other than a temporary or transitory purpose, you are a California resident. As a resident, your income from all sources is taxable by California.

Example 1 – You are a business executive and reside in New York with your family. Several times each year you travel to other states for business purposes. Your average stay is one or two weeks and the entire time spent in California for any taxable year does not exceed six weeks. Your family usually remains in New York when you are traveling for business purposes.

Determination: Under these circumstances, you are not a California resident because your stays in California are temporary or transitory in nature. As a nonresident, you are taxed only on your income from California sources, including your income for services performed in California.

Example 2 – In December 1992 you came to California on an indefinite job assignment. You rented an apartment upon entering California and continued to live in the apartment. You retained your home and bank account in Illinois until April 1994, at which time you sold your home and transferred your bank account to California.

Determination: Your assignment in California was for an indefinite period; therefore, your stay in California was not of a temporary or transitory nature. Although you kept ties in Illinois until April 1994, you became a California resident upon entering the state in December 1992. As a resident, you are taxed on your income from all sources.

Leaving California

Any individual who is a resident of California continues to be a resident when absent from the state for a temporary or transitory purpose.

For taxable years beginning on or after January 1, 1994, an absence from California under an employment-related contract for a period of at least 546 consecutive days may be considered an absence for other than a temporary or transitory purpose. See note under Section B.

Example 3 – Until September 1993, you were a resident of California. At that time, you declared yourself to be a resident of Nevada, where you have a summer home. You continue to spend six or seven months each year at your home in California, which you have retained. You spend only three to four months in Nevada and the rest of the time traveling in other states or countries. You transferred your bank accounts to Nevada. However, you continue to maintain your social club and business connections in California.

Determination: Your declaration of residency in another state does not establish residency in that state. Your closest connections are to California and your presence in California is for other than temporary or transitory purposes. You are, therefore, a resident of California and are taxed on your income from all sources.

Example 4 – You and your spouse are California residents. You accept a contract to work in South America for sixteen months. You lease an apartment near the job site. Your contract states that your employer will arrange your return back to California when your contract expires. Your spouse and your children will remain in California residing in the home you own.

Determination: You maintain strong ties with California because your spouse and children remain in your California home during your absence. Your intent is to return to California and your absence is temporary and transitory. You remain a California resident during your absence. You are taxed on income from all sources, including income earned in South America.

Example 5 – You receive and accept a permanent job offer in Spain. You and your spouse sell your home in California, pack all of your possessions and move to Spain on May 5th with your children. You lease an apartment and enroll your children in school. You obtain a Spanish driver's license and make numerous social connections in your new home. You have no intention of returning to California.

Determination: You are a part-year resident. Until May 5th, you were a California resident. On May 5th, you became a nonresident. All your income while you were a resident is taxable by California. While you are a nonresident, only income from California sources is taxable by California.

Example 6 – You are a resident of California. You accept a fifteen month assignment in Saudi Arabia. You put your personal belongings in storage in California, including your automobile. You have a California driver's license and are registered to vote in California. You maintain bank accounts in California. In Saudi Arabia, you stay in a compound provided for you by your employer, and the only ties you establish there are connected to your employment. Upon completion of your assignment, you will return to California.

Determination: You have maintained greater connections with California than you have established in Saudi Arabia. Your absence is for a temporary or transitory purpose. Therefore, you remain a California resident. As a California resident, your income from all sources is taxable by California, including the income that you earned from your assignment in Saudi Arabia.

F Income Taxable by California

Residents of California are taxed on ALL income, including income from sources outside California.

Nonresidents of California are taxed only on income from California sources.

Part-year residents of California are taxed on all income earned or accrued while a resident and only on income from California sources while a nonresident.

When you complete Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, you must compute your taxable income as if you were a California resident for the entire year. This is done by completing Schedule CA (540NR),

California Adjustments — Nonresidents or Part-Year Residents, column A through column D, to determine total adjusted gross income (AGI). California AGI applicable to a nonresident or part-year resident is computed on Schedule CA (540NR), column E. The ratio between total AGI and California AGI is used to determine your tax liability to California.

You should treat specific types of income as explained below.

Wages and Salaries

Wages and salaries have a source where the services are performed. Neither the location of the employer, where the payment was issued, nor your location upon receipt affect the source of this income. A nonresident must include the income for services performed in California on Schedule CA (540NR), column E. A resident must include all wages and salaries earned, regardless of where the services were performed.

Example 1 – You are a resident of New York working temporarily in California for a New York corporation.

Determination: Your income earned for services performed in California has a California source. As a nonresident, you must include this California source income on Schedule CA (540NR), column E.

Example 2 – You are a California resident. As a representative for your employer, you spent two weeks in Georgia to give training. You were paid by a Georgia corporation while you were in Georgia.

Determination: Because you are a California resident, you are taxed on all income, regardless of source. The income is taxable by California, even though it has a source in Georgia.

Interest and Dividends

Interest and dividends generally have a source where you are a resident. See the exception on page 3.

Example 3 – You are a resident of Texas and have interest from a California bank account.

Determination: Because you are a resident of Texas, the interest has a source in Texas. The interest is not taxable by California.

Example 4 – You are a resident of California and have interest from a savings account in Oregon.

Determination: Because you are a California resident, you are taxed on all income, regardless of source. The interest is taxable by California.

Example 5 – You are a resident of Montana and have dividends from a California corporation.

Determination: Because you are a Montana resident, the dividends have a

source in Montana. The dividends are not taxable by California.

Exception: Interest and dividends have a source in California if the account or security is used in a trade or business or pledged as security for a loan, the proceeds of which are used in a trade or business in California. For special rules regarding qualifying investment securities, refer to Revenue and Taxation Code (R&TC) Section 17955.

Business Income (or Loss)

A nonresident's income from California sources includes income from a business, trade or profession carried on in California. If the nonresident's business, trade or profession is carried on both inside and outside California and the part outside California is separate and distinct from the part inside California, only income from the part conducted inside California is considered California source income. If, however, there is any business relationship between the parts inside and outside California (flow of goods, etc.), the portion of income (or loss) taxable by California is normally determined by using the apportionment formula for corporations engaged in multistate businesses. Refer to 18 Cal. Code Regs. Section 17951-4 and Schedule R (100), Apportionment and Allocation of Income, for more information.

Pensions and Keoghs (HR 10)

Distributions from employer sponsored and self-employment (Keogh) pension, profit sharing, stock bonus plans, or other deferred compensation arrangements attributable to personal services performed in California, are California source income. Such distributions received after becoming a nonresident are taxable by California because the income had a source in this state.

Distributions received by California residents from deferred compensation arrangements are taxable by California regardless of where the services were performed because the individual is a resident when the distribution is received. Get FTB Pub. 1005, Pension and Annuity Guidelines, for more information.

Example 6 – You were a resident of California when you earned your pension. You retired and moved permanently to New Mexico. After becoming a resident of New Mexico, you begin drawing your pension.

Determination: Your pension is deferred compensation for services performed. Because the services were performed in California, the pension has a California source. As a nonresident, you must include this California source income on Schedule CA (540NR), column E.

Example 7 – You lived and worked in Ohio. You retire and move permanently to California. After becoming a resident of

California you begin receiving your pension.

Determination: Your pension is taxable by California because California residents are taxed on all income, regardless of source.

Lump-Sum Distributions

A lump-sum distribution attributable to services performed in California has a California source. California source income of a nonresident is taxable by California.

A lump-sum distribution received after you become a California resident is taxable by California. Residents of California are taxed on all income, regardless of source. Therefore, the distribution is taxable even if it is attributable to services performed outside of California and accrued prior to your becoming a California resident.

Example 8 – You lived and worked in New York. You retire and move to California and become a resident. Prior to relocating, you elected to receive a lump-sum distribution from your qualified pension plan. The distribution is received after you become a California resident.

Determination: The distribution is taxable by California because California residents are taxed on all income, regardless of source (*Appeal of Ralph G. and Martha E. McQuoid*, California State Board of Equalization, May 11, 1989).

Example 9 – You were a California resident and worked for a corporation in California. You moved to Ohio and elected to take a lump-sum distribution from your qualified pension plan.

Determination: The lump-sum distribution is deferred compensation for services performed. Since the services were performed in California, the distribution has a California source. The distribution is taxable by California.

Individual Retirement Account (IRA) and Simplified Employee Pension (SEP) Distributions

The IRA distribution taxable by California is the sum of your annual California contribution deductions plus all the earnings on the IRA while you were a California resident.

Distributions from a SEP from contributions made after 1986 are taxed by California the same as pension and Keogh distributions. Distributions from contributions made before 1987 are taxed by California the same as IRA distributions.

Get FTB Pub. 1005, Pension and Annuity Guidelines, for more information.

Sale of Real Estate

The gain or loss from the sale of real estate has its source where the property is located.

If you sell your California residence and move out of state and do not replace that residence, the capital gain is taxable by

California. The gain is taxable by California even if the residence is sold when you are a nonresident.

Example 10 – You are a resident of Idaho. You sold undeveloped real estate located in California at a gain.

Determination: Because the property is in California, the gain is California source income. As a nonresident, you must include this California source income on Schedule CA (540NR), column E.

Example 11 – You are a resident of California. You sold real estate located in England at a gain.

Determination: Because you are a California resident, you are taxed on all income, regardless of source. The gain on the sale is, therefore, taxable by California.

Example 12 – You are a resident of Nevada. You own residential rental property located in California. Your property has always shown a loss. As a result, you have never filed a California return. You sold the property for a gain.

Determination: Because the property is in California, the gain on the sale is taxable by California.

Since rental real property is classified as a passive activity, the sale "triggers" the deduction of suspended losses incurred in income years after January 1, 1987. The suspended losses may be used to offset any gain from the sale or income from other passive activities. Get Form FTB 3801, Passive Activity Loss Limitations, and instructions for more information.

Note: The basis of the property must be reduced by the amount of depreciation that would have been "allowable" had you filed California returns (*Appeal of Charles E. Kuhn*, California State Board of Equalization, November 21, 1991).

Partnership Income (or Loss)

A partner's share of partnership income (or loss) accrues at the end of the partnership's taxable year.

If a partner is a resident of California on the last day of the partnership's taxable year, the entire share of partnership income is taxable by California regardless of where the partnership property is located or where the partnership's business is conducted.

If a partner is a nonresident of California on the last day of the partnership's taxable year, the partner's distributive share of the net income (or loss) from a partnership conducting business outside California is not included in California source income on Schedule CA (540NR), column E. If a portion of the partnership income is derived from California sources, that portion of the income is taxable by California and must be included on Schedule CA (540NR),

column E. Refer to 18 Cal. Code Reg. Section 17951-4.

Example 13 – You are a resident of Maine and are a partner in a Maine partnership that owns real estate in California. The partnership sells the California real estate at a gain.

Determination: Because the real estate was located in California, the gain has a California source. As a nonresident, you must include your portion of the gain on Schedule CA (540NR), column E.

Example 14 – You were a resident of Kansas from January 1 to June 30. On July 1 you became a California resident. You are a partner in a Kansas partnership with a taxable year ending December 31. The partnership does business solely in Kansas.

Determination: Because the partnership income accrues at the end of the partnership's taxable year, your share of this income accrued to you on December 31. On December 31, you were a California resident. A California resident is taxed on all income regardless of sources. Therefore, all your Kansas partnership income is taxable by California. Do **not** prorate the Kansas partnership income for the period you were a nonresident.

Withholding of Tax at Source – Nonresidents

Withholding may be required on sales of California real estate, income allocations or distributions from partnerships and other payments of California source income paid to nonresidents. For more information, contact:

**FRANCHISE TAX BOARD
WITHHOLD AT SOURCE UNIT
PO BOX 651
SACRAMENTO CA 95812-0651**
Telephone (916) 845-4900
FAX. (916) 845-4831

Sale of Stocks and Bonds

The gain or loss from the sale of stocks or bonds has a source where you are a resident at the time of the sale. If buying and selling stocks and bonds is your trade or business, see the "Business Income (or Loss)" section for more information.

Example 15 – You are a resident of Oregon and sell stock of a California corporation at a gain.

Determination: Because you are an Oregon resident, the gain has an Oregon source. The gain is not taxable by California.

Example 16 – You are a resident of California and sell stock of a Kansas corporation at a gain.

Determination: Because you are a California resident, you are taxed on all income, regardless of source. The gain is taxable by California.

Installment Sales

Installment payments received by a nonresident on the sale of California property are taxable by California. However, the interest earned by a nonresident on the installment note is not taxable by California.

Installment payments received by a California resident due to a sale of out-of-state property are taxable by California. However, if the out-of-state sale was made prior to you becoming a California resident, the gain is not taxable by California. The interest earned on the installment note while you are a California resident is taxable by California.

Reimbursement of Moving Expense

The source of reimbursement of moving expenses is the state to which you move, regardless of your residency at the time the reimbursement is made.

G Specific Professions

Airline Employees

The wages of nonresident flight personnel (e.g., pilot, flight attendant) are not taxable by California unless more than 50 percent of the individual's scheduled flight time is in or over California. If more than 50 percent of the scheduled flight time is in or over California, wages are apportioned to California in the ratio of time spent in or over California to the total scheduled flight time.

Interstate Rail and Motor Carrier Employees

Income earned in the performance of regularly assigned duties in more than one state is deemed to be sourced in the state of residence.

Career Appointees in the U.S. Foreign Service

Individuals who are career appointees in the U.S. Foreign Service and who are domiciled in California are considered to be nonresidents when assigned to a post of duty outside California.

Military

Military personnel should get FTB Pub. 1032, Tax Information for Military Personnel, for specific guidelines on the taxability of military income.

Civilians Working for the Military

The rules for military personnel do not apply to civilians working for the military. You must determine your residency status and the source of your income based on the guidelines previously explained.

Merchant Seamen

A merchant seaman who is in California only because this state is a port-of-call, and who maintains no other contact or connections with this state, is a nonresident. However, a seaman who maintains close

connections with California remains a California resident while at sea. Under such circumstances, the seaman's absence is for a temporary or transitory purpose.

Example 1 – You are a merchant seaman and spend six to ten months a year aboard a ship outside California. You spend your time off in California. You own a home in California where your spouse resides. You vote and bank in California. You have a California driver's license and your automobile is registered in California.

Determination: You are a resident of California. Your time at sea is temporary and transitory. As a resident, all your income is taxable by California, including your income while at sea (*Appeal of James H. and Leila P. Pike*, California State Board of Equalization, February 1, 1983).

Example 2 – You are a merchant seaman and spend eight to ten months a year aboard a ship outside California. You are single and have no dependents. You spend 50 percent of your off-duty time or 10 percent of your total time in California. You only return to California when your employment brings you here. When visiting California, you stay in hotels. You have a California bank account in joint tenancy with your father. You have a California driver's license, but no car. You own no real property in California.

Determination: You are a nonresident of California. Your ties to California are not substantial and your time in California is temporary or transitory (*Appeal of Richard W. Vohs*, California State Board of Equalization, September 17, 1973).

H Residents of or Individuals in Foreign Countries

If you are a resident of a foreign country and perform services in California and/or receive income from California sources, you may have a California income tax filing requirement even if you have no federal filing requirement.

A tax treaty between the United States and another country may not affect the taxation of the income in California.

A federal income tax clearance does not affect your California tax liability. The Franchise Tax Board does not issue tax clearance certificates for individuals in this situation.

California does not allow a foreign tax credit or a foreign earned income exclusion. If you claimed the foreign earned income exclusion on your federal return, you must make an adjustment on Schedule CA (540NR) to increase your federal adjusted gross income by the amount of the foreign income excluded.

I Married Filing Separate Returns

Division of Income

The domicile of the spouse earning the income determines the division of income between spouses when separate returns are filed. Each spouse must follow the laws in his or her state of domicile to determine whether income is separate or community. When separate returns are filed, you and your spouse must each report half of the community income plus all of your separate income on your return. California is a community property state.

Meaning of Domicile

The term "domicile" has a special legal definition which is not the same as residence. While many states consider domicile and residence to be the same, California makes a distinction and views them as two separate concepts, even though they may often overlap. For instance, you may be domiciled in California but not be a California resident or you may be domiciled in another state but be a California resident for income tax purposes.

Domicile is defined for tax purposes as the place where you voluntarily establish yourself and family, not merely for a special or limited purpose, but with a present intention of making it your true, fixed, permanent home and principal establishment. It is the place where, whenever you are absent, you intend to return.

Change of Domicile

You can have only one domicile at a time. Once you acquire a domicile, you retain that domicile until you acquire another.

A change of domicile requires:

- abandonment of your prior domicile;
- physically moving to and residing in the new locality; and
- intent to remain in the new locality permanently or indefinitely.

Community Property

Community property is all of the property acquired by a husband or wife or both while domiciled in a community property state that is not separate property, as defined below.

Each spouse owns one-half of all community property. If property cannot be specifically identified as separate property, it is considered community property.

The following are community property states:

Arizona;
California;
Idaho;
Louisiana;
Nevada;
New Mexico;
Texas;
Washington; and
Wisconsin

Community Income

Income generated from community property is community income. Community income also includes compensation for services if the spouse earning the compensation is domiciled in a community property state.

Community income must be divided equally between you and your spouse when separate returns are filed.

Separate Property

Separate property is:

- property owned separately by the husband or wife before marriage;
- property received separately as gifts or inheritances;
- property purchased with separate property funds;
- money earned while domiciled in a separate property state; and
- all property declared separate property in a valid agreement (pre- or post-nuptial agreement).

Separate property must be maintained separately. If the property or the income from the property is used for community purposes, or commingled, it could lose its separate property character, overriding any agreements.

Separate Income

Generally, income from separate property is income of the spouse who owns the property. When separate returns are filed, you and your spouse must each report your separate income on your separate return.

Deductions

Expenses incurred to earn or produce community business or investment income are generally divided equally between you and your spouse. Each of you is entitled to deduct half of the expenses of the business or investment expenses on your separate return.

Expenses incurred to earn or produce separate business or investment income are deductible by the spouse who owns the investment generating the income, provided that spouse pays the expenses from his or her separate funds.

Expenses that are not attributable to any specific income, such as medical expenses, are deductible by the spouse who pays them. If these expenses are paid from community funds, the deduction is divided equally between you and your spouse.

Note: If one spouse itemizes deductions, you both must itemize deductions, even if the itemized deductions of one spouse are less than the standard deduction.

Exemption Credits

When you file separate returns, you and your spouse must each claim your own personal exemption credit.

When you have more than one dependent supported by community funds, you and

your spouse may divide the number of dependents between you in any manner you choose. However, you may not split the credit for any one dependent.

Division of Income, Residents of California – Examples

Example 1 – You and your spouse are residents of California. You earned \$15,000 in wages. Your spouse earned \$30,000. In addition to wages, you have stock that you inherited. The stock is in your name only, and you keep the stock and the dividend income separate from community funds. You received \$5,000 in dividends. You have decided to file separate returns.

Determination: You and your spouse each have \$22,500 in community income: $(\$15,000 + \$30,000 = \$45,000 \div 2)$. In addition to your \$22,500 in community income to be reported, you must include the \$5,000 of separate income from dividends, making your total income \$27,500.

Example 2 – You and your spouse are residents of California. For the first six months of the year you earned wages of \$30,000. Your spouse did not earn any income. On June 30 you and your spouse physically separated with no intention of reconciliation. During the last six months, you earned wages of \$30,000 and your spouse earned wages of \$10,000. You have decided to file separate returns.

Determination: For the first six months of the year, your earnings were community income. You and your spouse must each report on your individual returns one half of the income earned during this period. When you and your spouse physically separated with no intention of reconciliation, your community income status ended. Therefore, from July 1 through December 31, the income earned by you and your spouse was separate income on your individual returns.

	You	Your Spouse
Community Jan.–June	\$15,000	\$15,000
Separate July–Dec.	<u>30,000</u>	<u>10,000</u>
Total	<u>\$45,000</u>	<u>\$25,000</u>

For additional information on how to split income on Form 540NR, see page 6 and page 7 in this publication.

How To Split Income on Form 540NR

The following chart is a guide to split community income with your spouse based on domicile. Use the chart for married taxpayers who file Form 540NR, California Nonresident or Part-Year Resident Income Tax Return.

REMINDER: You must include all of your separate income in addition to your half of the community income when filing.

TYPE	HUSBAND'S DOMICILE	WIFE'S DOMICILE	Form 540NR, Married Filing Joint	Form 540NR, Married Filing Separate (husband's)	Form 540NR, Married Filing Separate (wife's)
1	Community Property State	Community Property State	Schedule CA (540NR), column A through column D: all income all deductions	Schedule CA (540NR), column A through column D: half of all income half of all deductions	Schedule CA (540NR), column A through column D: half of all income half of all deductions
			Schedule CA (540NR), column E: all income taxable by California	Schedule CA (540NR), column E: half of all income taxable by California	Schedule CA (540NR), column E: half of all income taxable by California
2	Separate Property State	Separate Property State	Schedule CA (540NR), column A through column D: all income all deductions	Schedule CA (540NR), column A through column D: all husband's income all husband's deductions	Schedule CA (540NR), column A through column D: all wife's income all wife's deductions
			Schedule CA (540NR), column E: all income taxable by California	Schedule CA (540NR), column E: all husband's income taxable by California	Schedule CA (540NR), column E: all wife's income taxable by California
3	Community Property State	Separate Property State	Schedule CA (540NR), column A through column D: all income all deductions	Schedule CA (540NR), column A through column D: half of husband's income half of husband's deductions	Schedule CA (540NR), column A through column D: all wife's income plus half of husband's income all wife's deductions plus half of husband's deductions
			Schedule CA (540NR), column E: all income taxable by California	Schedule CA (540NR), column E: half of husband's income taxable by California	Schedule CA (540NR), column E: all wife's income taxable by California plus half of husband's income tax- able by California
4	Separate Property State	Community Property State	Schedule CA (540NR), column A through column D: all income all deductions	Schedule CA (540NR), column A through column D: all husband's income plus half of wife's income all husband's deductions plus half of wife's deductions	Schedule CA (540NR), column A through column D: half of wife's income half of wife's deductions
			Schedule CA (540NR), column E: all income taxable by California	Schedule CA (540NR), column E: all husband's income taxable by California plus half of wife's income tax- able by California	Schedule CA (540NR), column E: half of wife's income taxable by California

Note: For information on income taxable by California, see Section F on page 2.

Example 3:

Bill and Betty are full-year nonresidents of California. Bill has a pension based on services performed in California. Bill's taxable pension distribution for the year is \$10,000. Betty has \$30,000 in wages for services performed in her state of residence. Betty also sold property in California that was her separate property. She had a \$100,000* gain. Bill and Betty filed separate federal returns, therefore, they must file separate California returns. The following situations show how their income should be divided based on domicile.

1. Husband and wife both domiciled in community property states.

		HUSBAND		WIFE	
		Schedule CA (540NR), column D	Schedule CA (540NR), column E	Schedule CA (540NR), column D	Schedule CA (540NR), column E
PENSION	TOTAL				
	\$ 10,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
WAGES	30,000	15,000		15,000	
GAIN	100,000			100,000	100,000

2. Husband and wife are domiciled in separate property states.

		HUSBAND		WIFE	
		Schedule CA (540NR), column D	Schedule CA (540NR), column E	Schedule CA (540NR), column D	Schedule CA (540NR), column E
PENSION	TOTAL				
	\$ 10,000	\$ 10,000	\$ 10,000		
WAGES	30,000			\$ 30,000	
GAIN	100,000			100,000	\$100,000

3. Husband is domiciled in a community property state and the wife in a separate property state.

		HUSBAND		WIFE	
		Schedule CA (540NR), column D	Schedule CA (540NR), column E	Schedule CA (540NR), column D	Schedule CA (540NR), column E
PENSION	TOTAL				
	\$ 10,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
WAGES	30,000			30,000	
GAIN	100,000			100,000	100,000

4. Husband is domiciled in a separate property state and the wife in a community property state.

		HUSBAND		WIFE	
		Schedule CA (540NR), column D	Schedule CA (540NR), column E	Schedule CA (540NR), column D	Schedule CA (540NR), column E
PENSION	TOTAL				
	\$ 10,000	\$ 10,000	\$ 10,000		
WAGES	30,000	15,000		\$ 15,000	
GAIN	100,000			100,000	\$100,000

* This income is from separate property, therefore, it is not divided even though she is domiciled in a community property state.

J Which Form to File

Residents – If you were a full-year resident of California in 1995 and meet the basic filing requirements outlined in Section K, below, you must file either Form 540, California Resident Income Tax Return, Form 540A, California Resident Income Tax Return, or Form 540EZ, California Resident Income Tax Return for Single and Joint Filers with No Dependents.

Nonresidents and Part-Year Residents – If you were a full-year nonresident of California in 1995 and meet the basic filing requirements outlined in Section K below, OR if you were a resident for part of the year, you must file Form 540NR, California Nonresident or Part-Year Resident Income Tax Return.

Your filing status for California must be the same as the filing status you used on your federal income tax return. However, for married taxpayers who file a joint federal income tax return, two exceptions are allowed:

- if either you or your spouse was an active member of the United States armed forces (or any auxiliary military branch) during 1995, or
- if either you or your spouse was a nonresident for the entire year and had no income from California sources during 1995.

In these cases, you may file either a joint return or separate returns. However, if you file a joint return and either you or your spouse was a nonresident in 1995, you must file Form 540NR.

K Basic Filing Requirements

Residents – You are required to file a return if you:

- were single or unmarried and your adjusted gross income (AGI) from all sources was more than \$8,000, or your gross income from all sources was more than \$10,000;
- were married and you and your spouse had a combined AGI from all sources of more than \$16,000 or had a combined gross income from all sources of more than \$20,000; or
- owe alternative minimum tax. Generally, if you filed federal Form 6251, Alternative Minimum Tax – Individuals, you must complete Schedule P (540), Alternative Minimum Tax and Credit Limitations – Residents, to see if you owe alternative minimum tax.

Children under 14 – California law is the same as federal law for children under age 14 who received more than \$1,300 of investment income in 1995.

Nonresidents and Part-Year Residents – You are required to file Form 540NR if you had income from California sources and:

- were single or unmarried and your adjusted gross income (AGI) from all sources was more than \$8,000, or your gross income from all sources was more than \$10,000;
- were married and you and your spouse had a combined AGI from all sources of more than \$16,000 or had a combined gross income from all sources of more than \$20,000;
- owe \$1 or more of tax; or
- owe alternative minimum tax. Generally, if you filed federal Form 6251, Alternative Minimum Tax – Individuals, you must complete Schedule P (540NR), Alternative Minimum Tax and Credit Limitations – Nonresidents or Part-Year Residents.

You should file Form 540NR if there is any question about the taxability of your income. By filing Form 540NR, you may avoid the imposition of penalties. You must attach a copy of your federal tax return to your Form 540NR.

Children under 14 – California law is the same as federal law for children under age 14 who received more than \$1,300 of investment income in 1995.

Note: You should file a return if you had California income tax withheld from your earnings or made estimated tax payments.

L Avoid These Common Mistakes on Form 540NR

Avoid making time-consuming and costly mistakes by reporting your AGI from all sources as if you were a resident of California for the entire year.

California tax returns start with federal AGI. However, there are differences between California and federal tax law. Use Schedule CA (540NR) to convert your federal AGI to your total AGI from all sources under California law. This means:

- add income excluded on the federal return (such as foreign income), unless the income is specifically excludable under California law; and
- subtract income that is taxable under federal law but not under California law (such as California lottery winnings and social security benefits.)

Note: Do **not** subtract non-California source income to determine your total AGI from all sources under California law.

When you compute your California AGI on Schedule CA (540NR), column E be sure to include:

- all income from every source while you were a resident of California; and
- income from California sources while you were a nonresident.

See Schedule CA (540NR) for more information.

M Double Taxed Income

If you paid taxes to California and to another state on the same income, you may qualify for a tax credit for taxes paid to another state. Get California Schedule S, Other State Tax Credit, for more information.

N For Additional Information

Regular Toll-Free Phone Service

Our regular toll-free telephone service is available from 7:00 a.m. until 8:00 p.m. Monday through Friday from January 2 through April 15, 1996. The best times to call are between 7:00 and 10:00 in the morning and between 6:00 and 8:00 in the evening. Service is also available on Saturdays, April 6, and April 13, from 8:00 a.m. until 5:00 p.m. After April 15, service is available Monday through Friday, between 8:00 a.m. and 5:00 p.m.

From within the United States, call 1-800-852-5711

From outside the United States, call (not toll-free) 1-916-845-6500

For hearing impaired with TDD. 1-800-822-6268

For federal tax questions, call 1-800-822-1040.

Bilingual Assistance

Para obtener servicio bilingüe de información sobre impuestos o formularios, llame al número de teléfono (anotado arriba) que le corresponde.

Hearing Impaired

Toll-free phone service is provided for the hearing impaired with a Telecommunications Device (TDD). Call 1-800-822-6268. The Franchise Tax Board will also accept calls for, and relay messages to, any California state agency.